IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 12062 of 2007(J)

PETITIONER:

V.R.VENUGOPAL, 3RD GRADE OVERSEER,
C.P.SECTION, UNDER CHAMRAVATTOM PROJECT
SUB DIVISION NO.1, ESWARAMANGALAM,
PONNANI, MALAPPURAM.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS:

1. **THE ASST.ENGINEER, CHAMRAVATTOM PROJECT, SECTION 2/1, ESWARAMANGALAM, PONNANI.**
2. **THE ASST.EXECUTIVE ENGINEER,CHAMRAVATTOM PROJECT SUB DIVISION NO.1, ESWARAMANGALAM, PONNANI.**
3. **THE EXECUTIVE ENGINEER, C.P.DIVISION, ESWARAMANGALAM, PONNANI.**
4. **THE SUPERINTENDING ENGINEER, PROJECT CIRCLE, PALAKKAD.**
5. **THE STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, SECRETARIAT, TRIVANDRUM.**

BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007 ALONG WITH WPC NO. 11265 OF 2007 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.12062/2007 J

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF CIRCULAR NO.9516/ADV.C1/92/P&ARD DTD. 17/03/98.**

EXT.P2: **COPY OF LETTER NO.A3-25617/05 DTD. 24/02/2006 ISSUED BY THE CHIEF ENGINEER, IRRIGATION & ADMINISTRATION TO THE SUPERINTENDING ENGINEER.**

EXT.P3: **COPY OF ORDER NO.G.O.(RT) 418/07/WRD DTD. 26/03/2007.**

EXT.P4: **COPY OF ORDER TERMINATING THE SERVICES OF THE PETITIONER NO.E1-11/07 DTD. 7/04/07.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

W.P.(C) Nos. 11265 of 2007-N, 12062 of 2007-J
12157 of 2007-V, 12340 of 2007-R & 14139 of 2007-G

Dated this the 11th day of July, 2007.

J U D G M E N T

W.P.(C).No.11265 of 2007:

The petitioners are III Grade Overseers working under the Water Resources Department. They were initially appointed on provisional basis during 1981-1982. They were appointed under Rule 9 (a) (i) of the KS & SSR for a period of 180 days. By virtue of the interim orders passed by this Court in the writ petitions filed by them, they were retained in service beyond 180 days. Later, all those writ petitions were allowed by the Full Bench decision of this Court in Umayammal Vs. State of Kerala (1982 KLT 829 (FB). As a result of that decision, the petitioners were liable to be retained in service till PSC hands report for duty. The Government, to get over the said decision, introduced Section 4 to the Kerala Public Services Act on 7-1-1984 with retrospective effect on 1-10-1981. The said section provided that not withstanding anything contained in the Industrial Disputes Act or any other law in force or any judgment, decree or order of any Court, the government servants will be governed by the Rules framed by the Kerala Public Services Act. In view of the said amendment which was introduced with effect from 1-10-1981, the petitioners could have been terminated from service in 1984 itself. The said amendment was challenged before this Court

by several provisional employees. This Court dismissed those writ petitions. The matter was carried in appeal before the Apex Court. Those cases were disposed of by the Apex Court by the decision in Narayani Vs. State of Kerala (1984 KLT 17). The Apex Court directed that the petitioners therein may be given a chance to appear for the next test conducted by the Public Service Commission, for the concerned posts. It was also ordered to retain the petitioners therein and all others who were similarly situated in service provided there are vacancies in which they can continue. It was clarified that the said direction will not affect the appointments of candidates advised by the Public Service Commission. In other words, they were allowed to continue till P.S.C hands report for duty. After the said decision, the Government issued Circulars dated 3-5-1984, 22-10-1984 and 19-10-1987 and also on 18-6-1988, governing retention of provisional hands. The last of those Circulars is produced as Ext.P1 in this writ petition. The gist of the earlier Circulars are mentioned in that Circular. Going by Ext.P1, it would appear that the Government allowed provisional hands who were in service on 24-11-1983 to continue in service provided there are vacancies till the PSC hands report for duty. Thereafter Government issued Ext.P2 Circular dated 9-3-1995 expressing its intention to consider regularization of hands working for very long periods. It was also ordered therein that provisional hands appointed before 1-11-1987 and continuing as on 13-1-1995 may not be discharged from service until the Government takes a decision in the

matter. The said Circular was challenged before this Court and the matter was finally disposed of by this Court by the judgment in W.A.No.105 of 2001 dated 21-12-2001. This Court directed the Government to take a final decision in the matter. The Government by Ext.P3 order dated 26-8-2002 decided not to regularize provisional hands generally. It was also ordered that individual cases will be examined separately and in deserving exceptional cases they will be allowed to continue on provisional basis till their retirement, invoking the power under Rule 39 of the Kerala State and Subordinate Service Rules.

2. In the meantime, the Government decided to consider the question of permitting the provisional III Grade Overseers working in the Water Resources Department to continue in service. To enable the Government to consider the same, some details were called for by the Chief Engineer from the concerned Executive Engineers, as per Ext.P4 communication. After collecting necessary materials, the Chief Engineer forwarded Ext.P5 concerning 31 provisional hands working in the cadre of III Grade Overseer, to the Government recommending regularization of them. In the meantime, the Chief Engineer issued Ext.P9 Circular directing to terminate all the provisional III Grade Overseers. Challenging the same, the petitioners filed W.P.(C) 26678 of 2006. This Court disposed of the writ petition by Ext.P10 judgment taking note of the direction issued by the Apex Court in Secretary, State of Karnataka Vs. Umadevi 2006 (4) SCC 1 = AIR

2006 SC 1806). In Ext.P10 judgment, the following directions were issued.

> " Having regard to the observations and directions issued by the Hon'ble Supreme Court as quoted above and in the light of the letter forwarded by the Chief Engineer to the Government on 28-3-2006 which contains all essential details necessary for due consideration of the case of the petitioners, I am inclined to dispose of this writ petition issuing the following directions:
>
> > i). The Ist respondent shall take up such steps as are necessary to regularize, as a one-time measure, the services of III Grade Overseers in the Irrigation Department who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or tribunals, provided their initial appointments were not illegal though irregular.
> >
> > ii). This shall be done as far as the petitioners are concerned, based on the details furnished in Ext.P5 and as expeditiously as possible, in any event, within one month on the petitioners producing a copy of this judgment along with a copy of the writ petition.
> >
> > iii). Respondents 1 and 2 shall ensure that regular recruitments are undertaken to fill up vacant sanctioned posts as are necessary in public interest and which are occupied by temporary employees or daily wagers who are not entitled for the benefit on regularization as ordered above.
> >
> > iv). Respondents 1 and 2 shall take note of the directions issued by the Hon'ble

> Supreme Court in the above judgment that the process must be set in motion within six months from the date of that judgment. Hence, there cannot be any further delay in implementing the directions of the Supreme Court in Umadevi's case (supra).
>
> v). In view of the fact that the petitioners have been continuing for more than ten years as III Grade Overseers though on a provisional basis, and since the head of the department has recommended their cases for regularization or for continuance in service, it will be in the interest of justice that the services of these petitioners are not terminated until the Government takes decision on Ext.P5 as directed above. Ordered accordingly."

3. In obedience to the said direction, the Government issued Ext.P11 order dated 26-3-2007 rejecting the claim of the petitioners for regularization. This writ petition is filed challenging Ext.P11. The petitioners point out that after 24-11-1983, they continued in service not on the strength of any interim order of this Court or the Supreme Court. Further, the petitioners could have been terminated after the introduction of the amendment to the Public Services Act on 7-1-1984. But, they were permitted to continue. The Government issued the first Circular on 3-5-1984 stating that the provisional hands working on 24-11-1983 can be allowed to continue till PSC hands report for duty. So, even assuming that there was some illegality or irregularity in retaining them in service, the same was

condoned by the Government and ordered their further retention in service. The Government have necessary powers under Rule 39 of the KS & SSR to do that. So, the petitioners would point out that their continuance from 1983-1984 onwards was not based on any order of the Court. They also submit that Ext.P11 does not deal with the decision of the Apex Court in Umadevi's case mentioned above or the recommendation of the Chief Engineer contained in Ext.P5. So, it is submitted that the order is vitiated for not taking into account the relevant matters. So, they pray for quashing Ext.P11. They also seek a further direction to the Government to regularize them.

4. The first respondent has filed a detailed counter affidavit resisting the prayers in the writ petition. According to the said respondent, all the petitioners were continuing on the strength of Court orders and therefore they are not entitled to the benefit of the judgment in Umadevi's case. Exts.P1 and P3 were issued based on the orders of the Court. So, their claim for regularization is unsupportable in law. The petitioners have filed a reply affidavit dealing with the contentions of the first respondent.

5. Heard the learned counsel on both sides. The relevant portion of Ext.P11 reads as follows:

> "The service details as per statement above clearly indicates that all are continuing under the cover of Court orders. Therefore all the cases attract the

> provisions for regularization as laid down by the Hon'ble High Court in its judgment dated 11-10-2006 in WP(C) 26678/06(A).
>
> As per our existing rules regular appointment are possible only through Public Service Commission.
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> In the circumstances Government in compliance of the judgment of Hon'ble High Court dated 11-10-06 in WP (C) No.26678/2006 filed by Sri. Rajan Varghese and others order that the service of the above 32 provisional employees continuing as 3rd Grade Overseers in various Offices of the Irrigation Department will be terminated with immediate effect."

6. The first ground taken in the Government Order is that all the petitioners are continuing under the cover of Court orders. So, they cannot be regularised in view of the direction contained in para 53 of the judgment in Umadevi's case which reads as follows:

> "One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (supra) R.N.Nanjundappa (supra) and B.N.Nagrajan (supra) and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should

> take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent those not duly appointed as per the constitutional scheme."

7. It is true the Apex Court has in the above-quoted para stated that the employees who have continued to work for 10 years or more but without intervention of Courts or Tribunals alone are entitled to be considered for regularization. But, in this case, after 1984 the petitioners continued in service by the final judgment of the Apex Court. The same was accepted by the Government and Circulars were issued stating that the provisional hands who were in service on the date of the judgment of the Apex Court will be retained till the PSC hands report for duty. So, I think the continuance of the petitioners on the basis of the final judgment of the Apex Court will not be covered by the expression 'orders of courts or tribunals'. Apparently, those words meant orders of the inferior courts and tribunals and may also include the orders of the High Court. But, in this case, the Apex Court,

apparently, in exercise of the power under Article 142 to do complete justice between the parties the directions in Narayani's case were issued. I think the continuance on the strength of it cannot be treated as a disqualification in terms of the directions issued by the Apex Court quoted above.

8. The contention of the petitioners that the Government did not advert to the decision of the Apex Court and the recommendation of the Chief Engineer in Ext.P5 also cannot be treated as unfounded. The learned Government Pleader would point out that they were also taken note of, though not dealt with in so many words in the impugned order. Even assuming the Government have dealt with the directions of the Apex Court quoted in Ext.P10 judgment, the Government have applied the principles wrongly. So, the matter requires reconsideration having regard to the principles laid down by the Apex Court as also the directions issued in Ext.P10. Accordingly, Ext.P11 is quashed. The matter is remitted to the Government, for fresh consideration, in accordance with law, after affording an opportunity of being heard to one of the representatives of the petitioners, within three months from the date of receipt of a copy of this judgment. In view of the interim orders passed by this Court the petitioners shall be retained in service and if any of them have been terminated, they shall be re-inducted, provided they have not reached the age of superannuation, till final orders are passed by the Government as directed above.

W.P.(C) Nos.12062 of 2007-J
12157 of 2007-V, 12340 of 2007-R & 14139 of 2007-G :

The point raised by the petitioners in these writ petitions is the same as the one raised in W.P.(C) No.11265 of 2007. Accordingly, it is ordered that the judgment in that case will govern these cases also.

The Writ Petitions are disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

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